

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Randall S. Selensky

OBJECTOR: Randall S. Selensky

CASE 41K-0054-R-2023

41K 160904-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned claim appeared in the Preliminary Decree for the Sun River (Basin 41K) with the following issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. THERE MAY BE PROBLEMS WITH VOLUME. TO ASSURE THE ORDERLY ADMINISTRATION OF WATER RIGHTS, THE WATER COURTS WILL SET A HEARING TO DETERMINE THESE ISSUES IF NO OBJECTIONS ARE MADE. THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD AND POINT OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claimant Randall Selensky filed an objection to the claim stating that the flow rate was previously quantified at 250 GPM and 166 acre-feet. This Master is interpreting the objection as seeking to quantify the flow rate and volume as they appeared in the Temporary Preliminary Decree and were claimed on the Statement of Claim. Claimant should file an objection to this Report if this is a misinterpretation.

Volume was previously addressed in a Master's Report issued on March 11, 1997 where the numerical quantification was replaced with the narrative description. Flow rate appears to have been similarly modified prior to the issuance of the Preliminary Decree.

FINDINGS OF FACT

1. Pursuant to the objection and the prima facie status of the Statement of Claim, flow rate and volume should be quantified at 250 GPM and 166 acre-feet.
2. The volume issue remark was previously addressed by this Court following the Temporary Preliminary Decree, however, the remark was not removed at that time as was the then-contemporary practice.
3. The remaining remarks are notice-type remarks that have served their purpose and should be removed from the claim.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it

existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The flow rate and volume should be corrected as discussed in Finding of Fact #1.
2. The issue remarks appearing on claim 41K 160904-00 were either previously addressed and resolved or are notice type remarks that have served their purpose and should be removed from the claim.

RECOMMENDATION

1. Upon review the record in this case, the flow rate and volume should be corrected as discussed above and the issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Randall S. Selensky
3912 17th Ave S.
Great Falls, MT 59405-5577

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 160904-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RANDALL S SELENSKY
3912 17TH AVE S
GREAT FALLS, MT 59405 5577

Priority Date: MARCH 20, 1949

Type of Historical Right: USE

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER

Flow Rate: 250.00 GPM

***Volume:** 166.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 40.00

Source Name: SPRING, UNNAMED TRIBUTARY OF MUDDY CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSENE	35	22N	1W	TETON

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	N2SENE	35	22N	1W	TETON

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.68 ACRES

Capacity: 2.17 ACRE-FEET

Period of Use: MAY 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		SWSWNE	35	22N	1W	TETON
2	6.00		NWSWNE	35	22N	1W	TETON
3	6.00		NESWNE	35	22N	1W	TETON
4	10.00		SESWNE	35	22N	1W	TETON
5	5.00		SWSENE	35	22N	1W	TETON

6	3.00	NWSENE	35	22N	1W	TETON
Total:	40.00					